

1-1-1974

Residential Property Assessments in the City of Buffalo: A Study of the Use of Administrative Discretion

George M. Hezel

University at Buffalo School of Law, hezel@buffalo.edu

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Property Law and Real Estate Commons](#), [State and Local Government Law Commons](#), and the [Taxation-State and Local Commons](#)

Recommended Citation

George M. Hezel, *Residential Property Assessments in the City of Buffalo: A Study of the Use of Administrative Discretion*, 23 Buff. L. Rev. 411 (1974).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol23/iss2/3>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

RESIDENTIAL PROPERTY ASSESSMENTS IN THE CITY OF BUFFALO: A STUDY OF THE USE OF ADMINISTRATIVE DISCRETION

GEORGE M. HEZEL*

I. INTRODUCTION

In *Discretionary Justice*¹ Professor Davis posits a scale ranking decisions according to the justice worked between individual parties. At the left end of the scale he places decisions governed by precise rules, at the right end decisions derived from unfettered discretion, and in the middle those determined by some mixture of rule and discretion.² Davis claims that "the greatest and most frequent injustice occurs at the discretion end of the scale where rules and principles provide little or no guidance, where emotions of deciding officers may affect what they do, where political or other favoritism may influence, and where the imperfections of human nature are often reflected in the choices made."³ Notwithstanding this fact, Davis laments, legal writing has concerned itself chiefly with the activities of judges and legislators to the neglect of those of administrators and executives.⁴ Thus, a vast area of official action has evaded the scrutiny of legal theorists and practitioners despite the fact that agency action has widespread impact on the quality of justice within the jurisdiction of the agency.

Therefore, it is not surprising that when section 720 (3) of the Real Property Tax Law⁵ (dealing with the methods of proving inequality in real property assessment review before the courts) was amended in 1969, and when article 15-a of the Real Property Tax Law⁶ (specifying qualifications required of assessors and creating boards of assessment review) was enacted in 1970, lawyers interested

* B.A., Fordham University, 1966; M.A., Fordham University, 1968; J.D., State University of New York at Buffalo, 1973. The author wishes to express his gratitude to Professor Daniel Gifford of the State University of New York at Buffalo for his most helpful comments on this manuscript.

1. K. DAVIS, *DISCRETIONARY JUSTICE* (1969).

2. *Id.* at v.

3. *Id.*

4. *Id.* at vi.

5. N.Y. REAL PROP. TAX LAW § 720(3) (McKinney 1972).

6. *Id.* §§ 1520-26.

in assessment practice turned their attention to those reform measures without considering the larger, and perhaps more elusive, issue of agency discretion.⁷ The purpose of both enactments, obviously, is to secure equality of assessment by fostering the participation of the property owner—and especially the residential property owner—in the assessment review process.⁸ Insofar as both measures facilitate review of the property owner's grievance—one by providing alternatives to the onerous and costly traditional method of proving inequality,⁹ the other by allowing administrative review of agency action before an impartial review board¹⁰—they may be of some benefit to certain property owners. However, for the property owner to take advantage of these two enactments, he must be sufficiently informed to detect the over-assessment in the first place and he must have sufficient resources to be able to press the issue before the court to guarantee the fair disposition of his grievance.¹¹

Both pieces of legislation are review-oriented and do not attempt to cope directly with the issue of agency discretion except by directing that assessment agents meet certain minimal qualification requirements. Between the court of review and the property owner stands the assessing agency, the board of assessors, which is entrusted with primary responsibility for insuring that real properties within its jurisdiction are equally assessed, and in no case assessed at more than full value.¹² In discharging this responsibility, the board routinely make numerous decisions about assessment procedures and practices. The board decides, for example, what particular properties and what particular groups of properties need assessment adjustments due to market changes; what assessment data and information will be disseminated to the public; when the grievance period will occur and how the event will be publicized; and what procedures the property owners must comply with in seeking review before the Board of Assessment

7. See Koeppel, *Inequality in Real Property Tax Review*, 19 BUFFALO L. REV. 565 (1970); Sommer, *A Summary of Current Real Estate Tax Assessment Protest and Judicial Review in New York State*, 44 N.Y.B. Ass'n J. 475 (1972).

8. See Sommer, *supra* note 7, at 485.

9. See Koeppel, *supra* note 7, at 570.

10. See Sommer, *supra* note 7, at 477.

11. M. Galanter, *Why the "Haves" Come Out Ahead: Speculation on the Setting and Limits of Legal Change* 32, Aug., 1972 (unpublished manuscript in the office of Professor Galanter at State University of New York at Buffalo Faculty of Law and Jurisprudence listing advantages accruing to litigants with resources).

12. N.Y. CONST. art. 16 § 2.

Review. These are only a few of the decisions made by the board of assessors in the course of its ordinary business. Since these decisions reflect choices among a variety of courses open to the board they should be subject to criticism as being more or less just. Furthermore, these apparently insignificant decisions will not only determine the board's effectiveness, but will shape the board's perception of its effectiveness. More importantly, the way the board exercises discretion in the decisional process will either sharpen or blur the property owner's perception of assessment practices. As a result, the degree of involvement by the property owner, particularly the residential property owner, in the assessment process frequently hinges on decisions made by the board in the course of performing its assessment functions. The assessing agency is vested with considerable discretion in its routine decision making, which may either promote or inhibit the ultimate purpose of the two recent legislative enactments: the participation of property owners in the assessment process as a means of achieving equality of assessments within the taxing unit.

This paper will analyze the way a particular assessment agency, the Board of Assessors of the City of Buffalo, uses its discretionary power and will suggest how the Board's use of discretion may affect the opportunities for residential property owners to participate in the review process. Although the analysis will be limited to one assessing agency, a survey of written materials on assessing practices indicates that although subject to different state laws, assessing agencies share common problems.¹³ The conclusions of this paper, therefore, may well apply to a number of agencies both within and without this state.

The method of analysis employed in this paper will be in accord with Professor Gifford's recommendations in a recent article on administrative decisional processes.¹⁴ In that article, Gifford suggests that the decisional process may be viewed in terms of two needs of the deciding official: his needs for relevant information and for appropriate decisional referents.¹⁵ The terms "referent" and "appropriate" are used

13. For an overview of some of the problems faced by California assessing agencies, see Carr, *Property Assessments: Protest, Appeal, and Judicial Review*, 17 AD. L. REV. 187 (1965). For a survey of problems faced by assessing agencies all over the United States, see W. GRIFFIN, STATE SUPERVISION OF LOCAL ASSESSMENT (1957). Cf. FIRST REPORT, ASSESSMENT ADVISORY COMMITTEE OF NEW YORK STATE BOARD OF EQUALIZATION AND ASSESSMENT, REAL PROPERTY ASSESSMENT (1964).

14. Gifford, *Decisions, Decisional Referents, and Administrative Justice*, 37 LAW & CONTEMP. PROB. 3 (1972).

15. *Id.* at 11-12.

advisedly. The term "referent" signifies any factor which influences "the decision-maker in his decision and to which he consciously adverts in deciding."¹⁶ "Referent" therefore includes both rule and non-rule bases of agency decisions.¹⁷ The term "appropriate," on the other hand, refers to the suitability of referents utilized by the agency in the decision-making process. "Appropriate" encompasses only those referents which relate to a recognized goal of the agency.¹⁸ Accordingly, the analysis will focus on methods an assessing agency might utilize to develop appropriate referents.

The analysis will examine the role of two referents in agency decision-making processes. One referent, self-evaluation and self-study by the agency, is concerned with the formation of fundamental policy regarding resource allocation within the agency. The other, participation by the property owner through the review process, relates to agency decisionmaking on an incremental level. It will become evident, however, that while the two referents operate on separate levels of agency decisionmaking, they are intimately related parts of the whole process.

II. SELF-EVALUATION BY THE ASSESSING AGENCY

A. *Appraisal and Sales—Assessment Ratio Analyses*

The determination of appropriate decisional referents by an agency requires knowledge about the subject matter within the agency's jurisdiction. Periodic systematic studies of the subject matter regulated by the agency is one method which has been recommended for its information yield.¹⁹ Given the responsibility of the Board of Assessors for developing and maintaining fair and equalized assessments and the fact that property values fluctuate, particularly in areas where significant changes have occurred, it would appear imperative that such studies be conducted on a regular basis.²⁰ Moreover, these studies would remedy what Donald E. Fleming, Supervisor of Real Estate

16. *Id.* at 13.

17. *Id.* at 12-13.

18. *Id.* at 27.

19. *Id.* at 15.

20. J. KEITH, PROPERTY TAX ASSESSMENT PRACTICES 202 (1966); Fleming, *Procedures That Assessors Use in Keeping Property Valuations Up-To-Date*, 23 J. TAXATION 58, 60 (1966).

PROPERTY ASSESSMENTS

Assessment in the District of Columbia, perceives to be the major weakness of many assessment systems: failure to keep assessments up-dated.²¹

Two commonly used methods of evaluating the quality of assessments are the random sample appraisal study and the sales-assessment ratio study. Both methods are employed by the New York State Board of Equalization and Assessment to determine equalization rates for the state.²² Under appraisal analysis, properties are randomly selected by type (residential, commercial, industrial, etc.) and appraised individually. The assessed values for the properties sampled are then divided by the appraised values and the resulting ratio is considered the assessment ratio.²³ Under sales-assessment ratio analysis all recent sales of property in a given area are separated into types; the sales which are not bona fide, open-market transactions are eliminated; the assessed values for the properties remaining are divided by the sales prices providing the assessment ratio.²⁴ While appraisal analysis is perhaps more thorough than sales analysis, it is far more cumbersome and time-consuming because it requires visiting each property sampled, interviewing local real estate agents and bankers to ascertain market trends and recording sales of comparable properties in the area.²⁵ Sales analysis, on the other hand, is a more efficient method which allows an assessing agency to process a great deal of information in a short period of time.²⁶ Furthermore, although the New York State Board of Equalization and Assessment uses both appraisal and sales analyses to compute equalization rates, the Board gives greater weight and significance to sales data where sales are sufficient and reliable.²⁷

Although the State Board of Equalization and Assessment relies on the sales-assessment ratio study in equalizing assessments among taxing units in the state, a local assessing agency is not compelled by law to use similar analysis to equalize assessments among districts within its unit.²⁸ The local agency, therefore, is free either to imple-

21. Fleming, *supra* note 20, at 58.

22. STATE BOARD OF EQUALIZATION ASSESSMENT, PRINCIPLES AND PROCEDURES USED IN ESTABLISHING STATE EQUALIZATION RATES 13 (rev. ed. 1963).

23. *Id.* at 16.

24. *Id.* at 20-21.

25. *Id.* at 17-18.

26. Fleming, *supra* note 20, at 60. See also J. KEITH, *supra* note 20, at 319-20.

27. STATE BOARD OF EQUALIZATION ASSESSMENT, *supra* note 22, at 21.

28. Although the assessing agency is compelled by law to assess all properties at full value or some uniform percentage thereof, the agency is not compelled to use any particular methods to achieve uniformity.

ment or ignore such analytical methods.²⁹ Given, however, the relative ease and low cost of conducting a sales-assessment ratio study, it is difficult to understand why an assessing agency would not wish to undertake one on a regular basis.³⁰ Sales-assessment analysis would also provide a rational, systematic method for assessment adjustment in place of the current practice of haphazard adjustment on a parcel-by-parcel basis only after a formal complaint is lodged.³¹

The value and importance of this analysis for an assessing agency becomes evident when one examines the appended sales-assessment ratio study of residential properties in several different areas of Buffalo.³²

B. *Significance of Sales-Assessment Ratio*

The significance of sales-assessment ratio survey for the Board of Assessors lies principally in its usefulness for directing the agency's attention to areas where adjustment is required. By applying sales-assessment analysis to particular districts within the taxing unit, the Board would be able to determine which districts were distorting the overall ratio and therefore in need of reassessment. Needless to say, such analysis would be especially useful in areas experiencing rapid incline or decline in property values.³³ Since a computation of the sales-assessment ratio could be easily performed by data processing equipment and continuously updated on a quarterly basis, the assessing agency could have at its disposal a bank of information about current sales trends for each type of property within its jurisdiction.³⁴ These data would provide an objective basis for the agency's decisions concerning allocation of resources for appraisals and reassessments in the following year.

29. Interview with Salvator Spinner, Chief Assessor, City of Buffalo, in Buffalo, New York, Dec. 12, 1972. It is not altogether clear whether the Board of Assessors of the City of Buffalo uses the sales-assessment ratio analysis. In the first interview with Mr. Spinner, the interviewer was led to believe that this type analysis was not customarily used. In the second interview, however, Mr. Spinner indicated that the Board did, in fact, conduct such studies, but that they were not available for public inspection.

30. See J. KEITH, *supra* note 20, at 320.

31. A survey of changes in residential property assessments over the past 12 years indicates that the Board of Assessors responds mainly only when goaded by complaint. See note 37 *infra*.

32. See Appendix *infra*.

33. Fleming, *supra* note 20, at 60.

34. J. KEITH, *supra* note 20, at 320.

PROPERTY ASSESSMENTS

III. THE WALL BETWEEN ASSESSOR AND TAXPAYER:

A CASE OF MISLEADING REFERENTS

The City of Buffalo contains a total of 97,777 taxable parcels.³⁵ The Chairman of the Board of Assessment Review estimates that in 1972 the Board heard about one thousand assessment complaints of which no more than half—again by estimate—involved residential property owners.³⁶ Furthermore, a survey of assessment changes in the “core” and “fringe” areas, where properties appear to be most over-assessed, indicates that relatively few owners of residential property have successfully sought reassessment in the twelve years since the last city-wide reassessment took place.³⁷ Given the significant over-assessment in these areas, one wonders why more aggrieved residential property owners have not achieved reassessment.

A. Fractional Assessments

One possible explanation for the relatively small number of reassessments in these two areas is that many property owners who are in fact overassessed do not realize that they are and therefore do not seek reassessment.³⁸ It has been suggested that property owners frequently do not have sufficient information about even the most rudimentary assessment practices to be able to discern inequality when it exists.³⁹ Although, for example, it is common practice for assessing agencies to assess properties at less than full value, many property owners are not aware of this fact.⁴⁰

35. ERIE COUNTY DEPARTMENT OF FINANCE, ANNUAL REPORT OF THE BUREAU OF TAX EQUALIZATION FOR THE YEAR 1971 AND BUREAU OF TAX PREPARATION 1972 TAX RATES 7 (1971).

36. Interview with John Rehak, Chairman of Board of Assessment Review, City of Buffalo, in Buffalo, New York, Jan. 16, 1973.

37. A survey indicates that a total of three favorable assessment changes have occurred among the residences sampled in the “core” area during the past 12 years. This is incredible given the drastic change in market values occurring during the same time. In the “upper-middle-class” area, 19 favorable assessment changes occurred during the same period, notwithstanding the fact that market values were either stable or rising in that area.

38. Interviews with owners of two properties in the “core” area indicated that though their properties were assessed at values greater than what they paid for the properties they had no idea of the assessments on their properties. Interviews with two residents of Emslie Street, in Buffalo, New York, Dec. 17, 1972.

39. Carr, *supra* note 13, at 195. See also Note, *Inequality in Property Tax Assessments: New Cures for an Old Ill*, 75 HARV. L. REV. 1374, 1380 (1962).

40. See note 37 *supra*.

This practice, therefore, no matter how universally recognized in assessors' circles, has the effect of obscuring unequal assessments, particularly when property owners are told that by law all properties are to be assessed at full value.⁴¹ When this is considered in conjunction with the fact that property owners are not explicitly informed of the accepted practice of assessing property at some percentage of full value nor of the ratio of assessed value to market value being used by the assessing agency, it is inevitable that misunderstandings occur. The Assessment Advisory Committee to the State Board of Equalization and Assessment recognized that this unusual combination of statutory law and contrary practice misled the public and commented in its *First Report*⁴² on the effect of the fractional assessment practice:

The law directing assessments at 100 percent of full value has not brought about that result and there is no reason to believe that it will. Instead, it has provided a *false guide* to taxpayers, leading many to believe that they are favorably treated so long as their assessments are under full value. Actually, they may be substantially over-assessed in relation to other property on the roll.⁴³

Whether or not assessments should reflect full value is a separate question requiring special attention. It may be helpful nevertheless to touch on the issue briefly, merely to point out the rationale for fractional assessments. Although the practice of assessing real property at a percentage of full value emerged in an era of competitive under-assessment, when state governments collected an *ad valorem* tax based on local assessments, fractional assessments persist today long after the historical forces which prompted the practice have disappeared.⁴⁴ The current rationale for a fractional assessment scheme revolves around issues of convenience, cost and confusion. Assessing at full value, the argument goes, would require an annual up-dating of assessments resulting in considerable cost to the agency⁴⁵ and confusion to the taxpayer.⁴⁶ In view of the confusion surrounding current practice of assessing at less than full value, however, and the cost of maintaining equal assessments at a fractional level, the case for keeping

41. N.Y. REAL PROP. TAX LAW § 306 (McKinney 1972).

42. FIRST REPORT, *supra* note 13, at 7.

43. *Id.* at 67.

44. STATE BOARD OF EQUALIZATION ASSESSMENT, *supra* note 22, at 2-3.

45. J. KEITH, *supra* note 20, at 410.

46. FIRST REPORT, *supra* note 13, at 67.

fractional assessments does not appear to be strong. After all, whether assessments are at 50 percent or 100 percent of value, up-dating and adjustment will be required on a continuing basis and the cost will presumably be the same in either case.

In addition, it is said that fractional assessments are easier to defend than full-value assessments.⁴⁷ The logic speaking to the defensibility of fractional assessments is elusive. Since value is a fact subject to proof, it would appear that if one were capable of showing full value, he would be equally capable of showing 50 percent of full value. If, on the other hand, the argument speaks to the obscurity of fractional assessments, *i.e.*, that inequality is not so easily detected in fractional assessments as in full value assessments, the meaning is clear but the reasoning is unsound. Such reasoning is unsound because it misstates the relationship between an informed public and the assessing agency. The reason for making the public aware of assessment practice is not to harass the agency and distract it from its task, but rather to enable the agency better to carry out its responsibility—the maintenance of equal assessments—by encouraging property owners to participate in the assessment process.

B. *Notification of the Property Owner*

Whether the Board of Assessors chooses to employ a full value method of assessing property or a uniform ratio method, notifying the property owner of the assessed value of his property and of the method used to arrive at the assessment would appear to be critical if the desired participation is to be achieved. The most effective means possible to serve this end should be utilized despite some relatively small cost to the agency. One author on assessment practice has urged that the agency annually inform each property owner by mail of the assessed value of his property and whether or not a change in the assessment has occurred.⁴⁸ The current form of notification used by the Board of Assessors of the City of Buffalo is somewhat less than solicitous of the property owner's interests. Once a year just before grievance days, the Board of Assessors publishes notice in the local newspapers that tentative assessment rolls are open for inspection at

47. J. KEITH, *supra* note 20, at 411.

48. *Id.* at 400.

the assessor's office.⁴⁹ Considering the ramifications of assessments in terms of tax dollars paid, publication of notice in the newspapers is meager notice indeed. Unless the property owner chooses to visit the assessor's office, which is open only during the work day hours, he has no way of knowing what assessment has been placed on his property.⁵⁰ Hence, the vicious cycle: the owner needs to know the assessed value of his property before he can begin to perceive inequality, should it exist, and take steps necessary to correct it.⁵¹

One might expect objection to mailing notice of assessments because of the additional cost incurred by the agency. It has been suggested, however, that notification by mail is not only more effective, but even more economical than using staff members to assist the public in inspecting assessment rolls.⁵² Since the property tax bill is mailed out at least once a year to the owner of each taxable parcel of property within the agency's jurisdiction, notice of assessment and of current rate of assessment could be included at minimal expenditure for handling and postage costs.

C. *Petition Form*

Suppose for a moment that a property owner, notwithstanding his confusion about assessment practice, should respond to the newspaper notice, inspect the rolls, discover the assessed value of his property, and suspect that his property is overassessed. What are the chances that he will successfully negotiate the procedural hurdles in seeking reassessment? This answer would depend in large part on the property owner's ability to cope with grievance form A-50-A provided by the Board of Assessors of the City of Buffalo.

The form, taken alone without explanation, would boggle the mind of a well-educated person. A study in obfuscation, the form is riddled with misleading and threatening statements and questions unanswerable due to unexplained technical terms. One can only imagine the frustration and confusion which might result from attempts to respond to this form.

49. N.Y. REAL PROP. TAX LAW § 1526 (McKinney 1972).

50. Interviews with several residents in the "core" area indicated that it would be very difficult for the property owner to visit the assessor's office during working hours either because of work commitments or because of commitments to the children at home. See note 38 *supra*.

51. *Id.*

52. J. KEITH, *supra* note 20, at 400.

To begin with, at the very top of the form, printed in conspicuous bold type is the statement "The Tax Law Requires that all REAL ESTATE shall be assessed at its full and true value."⁵³ While the statement is a correct representation of the Real Property Tax Law,⁵⁴ it is misleading because the property owner may well have a valid complaint even though his property is assessed at less than its full value. The first question on the grievance form—"Is the property assessed at more than it is worth?"⁵⁵—reinforces the tenor of the leading statement. In similar fashion the third, fourth, and fifth questions dealing with the full value of the property, amount of insurance on the property, and reproduction cost⁵⁶ might lead a complainant to believe that if his property was assessed at less than full value, he was being treated favorably. Since no statement on the form directly and explicitly dispels this belief and no written explanations accompany the form, a property owner might reasonably conclude that he has no cause for complaint.

Adding fear to confusion, two warnings appear in the margins flanking the grievance form. The left margin contains a bold-type print-out of section 2321 of the Penal Law⁵⁷ which provides that any person who knowingly makes false statements in reference to taxes shall be guilty of a misdemeanor. In the right margin, section 512 of the Real Property Tax Law warns that a person who willfully neglects or refuses to answer a material question put to him shall not be entitled to a reduction in his assessment.⁵⁸ By implication, a complainant might assume that all questions on the form are material and therefore need to be answered. However, section 512 of the Real Property Tax Law itself provides that not every question on the form is "material" and not all the questions need to be answered to make out a sufficient complaint.⁵⁹ Though the intent of the warnings is undoubtedly to induce care and truthfulness in answering the grievance form questions, the effect may well be to intimidate a confused property owner and cause him to drop a valid complaint either because he cannot shape

53. See complaint form A-50-A, issued by the Board of Assessors, City of Buffalo.

54. N.Y. REAL PROP. TAX LAW § 306 (McKinney 1972).

55. Complaint form A-50-A, *supra* note 53.

56. *Id.*

57. N.Y. PENAL LAW OF 1909, §2321 (repealed 1967).

58. N.Y. REAL PROP. TAX LAW § 512 (McKinney 1972).

59. *Id.* See Sommer, *supra* note 7, at 480.

his complaint to fit the form or because he is unable to answer some of the questions which he thinks are "material."

A third difficulty with the grievance form arises from the use of unexplained terms which have special meaning in assessment review. Buried at the bottom of the form, for instance, are two questions dealing with objections based on "illegality" and "inequality."⁶⁰ Without some explanation of these terms, the property owner is bound to be bewildered by what appear to be similar grounds for complaint. What is more, the question treating inequality—perhaps the most important question on the form—misstates the ground for complaint by asking if "the objection is based upon any inequality with *adjoining property*."⁶¹ The ground is incorrectly articulated because a complainant's property may in fact be assessed at the same rate as adjoining property and thus appear to be equally assessed, but nevertheless actually be overassessed because adjoining properties are themselves overassessed. This is in fact the case for many properties in Buffalo's "core" and "fringe" areas.⁶²

Given the serious problems with the grievance form currently used by the Board of Assessors of the City of Buffalo, it is unclear why the Board persists in using it. The State Board of Equalization and Assessment has provided a suitable alternative form—Form EA-38—which clearly and simply articulates the grounds for complaint and information necessary to support a complaint.⁶³ The state form together with a pamphlet explaining the form questions and filing requirements are now being used by the Erie County Department of Real Property Tax Services.⁶⁴ Moreover, the county has offered to supply the Board of Assessors of the City of Buffalo with a sufficient number of these forms to cover assessment review needs.⁶⁵ Given this viable alternative, it is very difficult to justify the continued use of such a deficient grievance form.

60. Complaint form A-50-A, *supra* note 53.

61. *Id.* (emphasis added).

62. Appendix, Table 2 *infra*.

63. See complaint form EA-38, issued by the State Board of Equalization and Assessment.

64. ERIE COUNTY DEPARTMENT OF REAL PROPERTY TAX SERVICES, GENERAL INFORMATION AND FILING REQUIREMENTS FOR COMPLAINTS ON REAL PROPERTY ASSESSMENTS (1969).

65. Interview with Dominic S. Telesco, Director, Real Property Tax Services, Erie County, in Buffalo, New York, Nov. 28, 1972.

PROPERTY ASSESSMENTS

IV. CONCLUSIONS AND RECOMMENDATIONS

Criticism of assessment administration is not new⁶⁶ and it will undoubtedly persist so long as tax liability continues to be imposed on the basis of property valuations which are not adjusted periodically to reflect the continuing fluctuation of market prices.⁶⁷ The assessor's difficulties appear twofold: first, in finding methods of valuing property with an acceptable degree of accuracy at a sufficiently low cost;⁶⁸ and second, in devising a process by which property valuations can be adjusted from time to time to reflect market fluctuations.⁶⁹ The concern of this paper has been chiefly with the latter.

Two complementary courses of action open to an assessing agency which would enhance the quality of assessments have been suggested. The first, use of sales-assessment ratio analysis utilizes "scanning" methods to discern area-wide weaknesses in assessment structures and to provide a rational systematic basis for agency decisionmaking concerning fundamental matters such as the allocation of agency resources over an extended period of time.⁷⁰ The second course, the review process, involves strengthening an incremental type of decision-making by assuring that property owners have an adequate opportunity for bringing relevant information about particular properties to the assessor's attention. Relevant information about particular properties, in turn, may reveal difficulties which warrant additional scanning.⁷¹

Although both sales-assessment ratio analysis and the review process furnish information required for constructing suitable agency referents, and consequently for arriving at intelligent decisions, an

66. D. NETZER, *ECONOMICS OF THE PROPERTY TAX* 173 (1966).

67. *Id.* at 182-83.

68. *Id.* at 180-81.

69. Fleming, *supra* note 20, at 58.

70. A. ETZIONI, *THE ACTIVE SOCIETY* 286-88 (1968). As used by Etzioni the term "scanning" means combining "the collection, processing, and evaluation of information with the process of making choices." The value of scanning by computer, as Etzioni points out, lies in its counterweighting effect on the maintenance of communities-of-assumptions. *Id.* at 286.

71. Etzioni describes incremental decisions as "bit decisions" made "within the contexts set by fundamental decisions (and reviews)." *Id.* at 283. He goes on to point out the dialectic between incremental and fundamental decisionmaking by suggesting that "(a) most incremental decisions specify or anticipate fundamental decisions, and (b) the cumulative value of the incremental decisions is greatly affected by the underlying fundamental decisions." *Id.* at 289 (emphasis in original).

effective review process itself presupposes the agency's willingness to inform the public of currently used referents.⁷² Unless the property owner—particularly the property owner who has insufficient resources to hire a lawyer—is informed of factors which the agency deems significant in deciding the merits of assessments, he will be unable to present an effective case. Thus, the effective participation of the small property owner in the assessment process depends largely on information provided by the assessment agency.

Recognizing the serious problems which face urban assessing agencies, the National Commission on Urban Problems in its final report—*Building the American City*⁷³—suggested a number of ways assessments could be improved. Among the Commission's recommendations were proposals for "state legislative action to improve the property tax by eliminating unenforceable features, professionalizing the assessment function, moving to full-value assessment, ascertaining and publicizing assessment ratios, and providing effective taxpayer appeals machinery."⁷⁴

Many of the Commission's proposals for legislative action have already found expression in enactments by the New York State Legislature, most recently in the statutes dealing with creation of assessment review boards and alternate, less costly, methods of proving inequality. Some of the proposals pertain to matters which lie within the scope of assessment agency discretion and therefore can be implemented by exercise of agency authority. As has been pointed out above, since implementation of a number of the proposals would entail insignificant cost to the agency, there appears to be no good reason for the agency to delay implementation until goaded by the State Legislature.

It is therefore suggested that the Board of Assessors of the City of Buffalo exercise its authority to implement the following recommendations:

First, the issuance of a more intelligible grievance form is strongly recommended. The one currently used by the Erie County Department of Real Property Services is a suitable alternative.

72. Gifford, *supra* note 14, at 29-30.

73. 1969 PROCEEDINGS OF THE SIXTY-SECOND ANNUAL CONFERENCE ON TAXATION HELD UNDER THE AUSPICES OF THE NATIONAL TAX ASSOCIATION.

74. *Id.* at 95.

PROPERTY ASSESSMENTS

Second, the Board of Assessors should give annual notice by mail of the assessment on each taxable parcel of property. This could be done by including in the first tax bill sent out each year a statement of the amount at which the property is assessed and the current equalization rate for Buffalo.

Third, the Board should undertake periodic sales-assessment ratio studies to discover the sources of assessment inequality in its jurisdiction. Also the results of these studies should be published.

Fourth, the Board should undertake area-wide reassessment programs where needed. Specifically, this should be done in the areas shown by analysis to be overassessed.

Fifth, the City of Buffalo should allocate resources for the study of full-valuation assessment. In such case, resources must also be allocated for a public information program relating the effects of full-valuation, so that the taxpayers' apprehension concerning increased valuation may be mitigated.

The intent of these recommendations is to provide information about assessment practices to the small property owner who has the present disadvantage of being unable to participate effectively in assessment review because of confusing practices and procedures. The current practices and procedures of the Board of Assessors give large property owners, armed with counsel, the advantage of being able more easily to pierce the fictions of assessment law and thus to present an effective case for reassessment. Since obscurity appears to benefit the large property owner while working hardship on the small property owner, it is hoped that clarification of assessment practice and procedures will provide the small property owner with an equal opportunity to participate in the assessment process.

APPENDIX*

INEQUALITY IN RESIDENTIAL PROPERTY ASSESSMENTS:
A STATISTICAL STUDY FOR THE CITY OF BUFFALO

DUNSTAN L. HAETTENSCHWILLER†

Whenever property is assessed for taxation, inequality of assessments will occur owing to the imprecise nature of the assessment procedures. The present study, however, is not concerned with such *random* inequalities but rather with inequalities hypothesized to occur because of some *systematic bias*.

The sales-assessment ratio study has been the customary method for testing the hypothesis of systematic bias in the assessment of property. This method is concerned with assessment-sale price quotients expressed as percents and particularly with the variance of these percents from area to area. Modern statistical techniques used in conjunction with computers, however, permit a more precise detection of systematic bias where the bias is hypothesized to be related to a specific source—such as geographical area—while at the same time controlling competing sources of bias—such as type of residence or recency of purchase. Hence, the present study provides not only a sales-assessment ratio study for the City of Buffalo but also a model of the statistical techniques available for such studies in general.

Method

The question researched was whether residences in areas deemed economically different were being assessed at significantly different rates. The areas selected for investigation were those that might justify

* The following members of the Erie County Public Interest Research Group provided research assistance to Dr. Haettenschwiller for the preparation of the information presented in this Appendix: John Martinez, S.J., Paul J. Blachowicz, Kevin J. McLaughlin, Mark R. Miller, Richard J. Meyers, Laura A. Pijanowski, David R. Rybak, Joseph F. Saeli, Paul A. Saviola, Dwight W. Tate and Robert Chesbro.

† Coordinator of Developmental Research (EOP), State University of New York College at Buffalo. B.S., State University of New York College at Plattsburgh, 1956; M.S., 1963; Ph.D., State University of New York at Buffalo, 1971.

PROPERTY ASSESSMENTS

ably be deemed *core, fringe, lower-middle class, and upper-middle class*. Census data were consulted to verify the classification (see Table 1).

TABLE 1

Population and Income Characteristics for Sampled Areas (Census Tract Data taken from UNITED STATES BUREAU OF THE CENSUS, 1970 CENSUS OF POPULATION AND HOUSING, BUFFALO, NEW YORK, STANDARD METROPOLITAN STATISTICAL AREA (1972).)

Area	Street	Tract #	% Negro	Median Income	Mean Income
Core	Emslie	15	82.5%	\$ 6,500	\$ 6,762
	Orange	31	81.1%	\$ 6,216	\$ 6,742
*Fringe	Lafayette	64	45.0%	\$ 8,348	\$ 9,306
	**Oxford	65.02	13.7%	\$10,822	\$14,915
Lower-Middle	Stockbridge	47	1.1%	\$10,389	\$10,900
	Elmer	42	1.9%	\$ 9,167	\$ 9,891
	Glendale	52.02	83.4%	\$ 9,590	\$10,308
	Blaine	52.02	83.4%	\$ 9,590	\$10,308
Upper-Middle	Lafayette	63.02	.4%	\$13,345	\$18,374
	Nottingham	54	.7%	\$13,580	\$21,328

* UNITED STATES BUREAU OF THE CENSUS, 1960 CENSUS OF POPULATION AND HOUSING, BUFFALO, NEW YORK, STANDARD METROPOLITAN STATISTICAL AREA (indicates that in census tract 64 there were five Negroes among a total population of 1086 and in census tract 65B (now 65.02) there were three Negroes among a population of 4293).

** The census tract which encompasses Oxford Street also contains a portion of the neighborhood designated upper-middle income. This explains the relatively low percentage of Negro population and the relatively high median and mean incomes.

The core area was shown to have a black population of more than 80 percent and a median income of \$6500.00 or less. The fringe area bordered predominately black or white neighborhoods and had a black population which had increased over the last ten years or so from less than one percent to 45 percent. The lower-middle class area was one with a stable racial composition, black or white, and a median income around \$9500.00. The upper-middle class area was shown to have a median income of \$13,500.00 and, unlike the other areas, a mean income considerably higher than its median.¹

1. The areas from which data were collected may also be described by their physical boundaries. The core area is bounded by William Street on the south, Michigan

Researchers were assigned to each area and instructed to select at random block segments of predominantly residential property.² For a total of 189 residences on the streets in the four areas the following data were obtained: type of residence (one family, two family), year of sale, assessed valuation and most recent sale price as determined from the amount of revenue stamps recorded.³ Finally, a further datum calculated for each residence was the ratio of assessed valuation to sale price, this ratio being expressed as a percent.

Statistical Treatment

The data were subjected to a powerful statistical treatment known as the analysis of variance. The first step in this analysis is to test the null hypothesis; that is, the hypothesis that no significant differences obtain. Failure to reject the null hypothesis ends the research. On the other hand, the rejection of the null hypothesis opens up the research

Avenue on the west, Best Street on the north, and Herman and Smith Streets on the east. The fringe area is bounded by Ferry Street on the south, Linwood Avenue on the west, Delavan Avenue on the north and Main Street on the east. The lower-middle class white area is bounded on the south by Kensington Avenue, on the west by Parkridge Avenue, on the north by Winspear Avenue and on the east by Eggert Road. The lower-middle class black area is bounded by Delavan Avenue on the south, Jefferson Avenue and Main Street on the west, Humboldt Parkway on the north, and the Kensington Expressway on the west. The upper-middle class area is bounded on the south by Ferry Street, on the west by Elmwood Avenue, on the north by Amherst, and on the east by Nottingham Terrace and Delaware Avenue.

2. The study comprised the following selected block segments of residential property: Emslie Street between Peckham and Paderewski Streets and Orange Street between Carlton and North Streets designated as core; Lafayette Avenue between Linwood Avenue and Harvard Place, and Oxford Avenue between Ferry and Balcom Streets designated as fringe; Stockbridge Avenue between Parkridge and Comstock Avenues, Elmer Street between Kensington and Hutchinson Avenues, Glendale Place between Main Street and Humboldt Parkway and Blaine Avenue between Jefferson Avenue and Meech Street designated as lower-middle class; and Lafayette Avenue between Elmwood and Delaware Avenues and Nottingham Terrace between Amherst Street and Delaware Avenue, designated as upper-middle class.

3. Data on every property within the chosen block segments were collected from assessment office records and county deed records. From assessment roll and maps the following items were copied for each parcel: street number, building type, assessment, grantee's name, and page and liber number of the deeds recordbook wherein a copy of the most recent deed could be found. The date of recording, amount of revenue stamps, grantor's name and amount of any mortgage assumed by a grantee were copied from the recorded deed. These data were entered on a data sheet and initialed by the researcher. The study sample consisted only of properties with building types "03" and "05" (one- and two-family residences). Also, properties which were transferred on the open market before 1950 were eliminated as were properties with unexplainably low sale prices (\$100-\$500), and properties transferred within the family, by inheritance, or by forced sale.

PROPERTY ASSESSMENTS

to further investigation into the nature and extent of the differences demonstrated to exist.

In addition to the principal research hypothesis (that significant differences in rates of assessment exist among the areas) it was also important to formulate and test additional null hypotheses which if maintained (not rejected) would forestall certain objections and strengthen the findings on the principal hypothesis. Hence, through the use of assessed valuation (AV), sale price (SP), and ratio of assessed valuation to sale price (AVSP), differences were tested between the two types of residence, among the three time periods (1950's, 1960's, and 1970's), and most importantly, among the four areas.

Finally, analysis of covariance was performed with SP entered into the model as the covariate while differences in AV were tested for among the four areas, three time periods, and two house types. What this means simply is that adjustments were made for differences in the sale prices of the residences *before* testing among areas for differences in assessed valuations. If indeed the assessed valuation reflects the sale price in a consistent manner, then there would be negligible differences in AV among areas following such adjustment. Inasmuch as differences in assessed valuation exist by virtue of differences in property value, such differences, it was hypothesized, would disappear if adjustments were made proportional to the sale price of each property. The test would then be made to determine if there still remained any additional systematic bias among the mean assessed valuations for the residences in the four areas.

TABLE 2

Observed Means for Assessed Valuation (AV), Sale Price (SP),
Ratio of Assessed Valuation to Sale Price (AVSP), and Ratio of
Mean AV to Mean SP of Residences in Four Areas of Buffalo,
New York

<i>Area</i>	<i>Assessed Valuation</i>	<i>Sale Price</i>	<i>AVSP Ratio</i>	<i>Mean AV Mean SP</i>
Core (45)	\$3676	\$5434	89.4%	67.6%
Fringe (62)	\$7190	\$9067	88.7%	79.3%
Lower-Middle Class (40)	\$6047	\$12084	51.6%	50.0%
Upper-Middle Class (42)	\$15654	\$28157	56.8%	55.6%

Results

Not surprisingly, the null hypotheses for no difference in SP between one-family and two-family residences among the three time periods and among areas were rejected. Two-family houses cost more than one-family houses and the price of houses in general has changed over the years.

Significant differences were also found in AV between one-family and two-family residences and among the four areas but not among the three time periods. Most importantly, while there were significant differences among areas in the AVSP-ratio, this was not so either for type of residence or for time period.

This last finding made possible exclusive focus on the principal research question without regard to the time of sale or the type of residence. (The traditional analysis of variance and covariance tables have been omitted but are available from the author upon request. In all instances where the null hypothesis was rejected the statistical probability of falsely rejecting it was substantially less than one percent.)

Table 2 shows the clear distinction in the mean SP for each area sampled. However, one glaring discrepancy is noted in regard to the mean AV for the fringe and lower-middle class areas, namely that while there was an *increase* of \$3017 in mean SP between the former and the latter, there was a *decrease* in the mean AV of \$1143. There seems to be no ready explanation for this.

In Table 2 it will be noted that a discrepancy exists between the mean AVSP-ratio and the mean $AV \div \text{mean SP}$ figure for each area. This discrepancy occurs because it is the lower-priced residences that tend to be assessed at higher rates resulting in a "weighting" effect by higher-priced properties which are assessed at lower rates. The discrepancy decreases from area to area—core, 21.8 percent; fringe, 9.4 percent; lower-middle class, 1.6 percent; and upper-middle class, 1.2 percent. Thus for the lower- and upper-middle class the two ratios approximate each other and also are closer to the equalization rate of 55 percent for Buffalo.

For the four areas combined, the mean AV (\$8400) divided by the mean SP (\$13,646) yields an overall ratio of 61.6 percent. This too varies from the overall mean AVSP-ratio of 71.6 percent and illustrates again how the higher-priced (and higher-assessed) residences exert a weighting effect which obscures inequities in the rates of assessment of lower-priced residences.

PROPERTY ASSESSMENTS

A more powerful test for differences in rates of assessment is the aforementioned analysis of covariance. The null hypothesis was rejected providing strong evidence that even when the effect of differences in sale price has been eliminated, there still remain significant differences in assessed valuation among the four areas.

TABLE 3

Correlation Matrix of Assessed Valuation, Sale Price, and Ratio of Assessed Valuation to Sale Price (AVSP) for 215 Residences in Buffalo, New York

	<i>Assessed Valuation</i>	<i>Sale Price</i>	<i>AVSP Ratio</i>
Assessed Valuation	1.000	—	—
Sale Price	.370	1.000	—
AVSP Ratio	.221	— .395	1.000

The source of these differences is to be found in the low correlation between SP and AV (.370) which should approach 1.000. This correlation when squared yields .137 which indicates that only 13.7 percent of the variation in AV is accounted for by variation in SP. The "shared variation" can be shown graphically by two overlapping circles. If the assessed valuation truly reflected the sale price, the two circles would overlap almost entirely. Instead, only 13.7 percent of the one circle overlaps with the other.

The correlation between SP and AVSP also bears closer examination. Supposedly, there should be zero correlation between these two since the rate of assessment should be the same regardless of sale price. Instead, there is a significant negative correlation of —.395. This reveals an inverse relationship where the greater the SP, the less the AVSP, and conversely, the less the SP, the greater the AVSP. Simply put, then, this suggests that the rate of assessment is to some extent predictable from the sale price so that lower-priced residences are significantly more likely to be overassessed than higher-priced residences.

Discussion and Recommendation

Reasons for such inequities in the assessment of residential property may be many but one reason would seem to be the failure to make

reassessments in areas where drastic changes in the market value of property have occurred. For example, the mean market value for single-family residences in the upper-middle class area for the three time periods sampled *increased*—\$18,900, \$27,000, \$27,600—while the assessed-valuation÷sale-price ratio *decreased*—85 percent, 48 percent, 47 percent. The reverse held true for single-family residences in the core area—\$5500, \$4700, \$2000 and 53 percent, 90 percent, 149 percent.

It can be seen that market values are rising in certain areas of the City and declining in other areas but little effort is being made to bring assessed valuations in line with these changes. One senses a let-sleeping-dogs-lie attitude on the part of the Board of Assessors. This unwillingness to make adjustments may be traced in part to the greater political clout the middle-class possesses when compared with those living in the core and fringe areas. As long as the latter do not elect to appeal the assessed valuation of their property—and keep in mind that this is largely owing to the level of sophistication associated with the assessment process⁴—it certainly would make no sense for the Board of Assessors to stir up a hornets' nest by raising the assessments of the politically more vocal middle-class.

Yet, it is not only in the interest of justice and humanity that the poor should not be over-taxed. There are some hard-nosed reasons which should appeal to those who subscribe to the primacy of economic principles. First, equitable assessed valuations which are brought in line with changed market values have a stabilizing effect similar to that of technical factors operating in the stock market. Thus, lowered assessments make property more attractive both to hold and to buy. By contrast, excessive assessments discourage potential investors while depressed market prices make present owners unwilling to sell at a loss. While the latter condition is not an uncommon stock market phenomenon, the consequences in this instance are more serious since

4. REPORT TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, A STUDY OF PROPERTY TAXES AND URBAN BLIGHT—SUMMARY OF FINDINGS (Arthur D. Little, Inc. 1973). The findings of this study are based on interviews with 228 owners, and data on 420 of their properties located in ten cities. The study was prepared by Arthur D. Little, Inc. under HUD Contract H-1299. "The evidence of this study indicates an unequal use of appeals procedure. . . . On balance, the appeal procedure appears to make the property tax more regressive than less." *Id.* at 6.

owners will often seek to avoid further loss simply by neglecting to invest in upkeep or improvement.⁵

Secondly, the role of potential investors in core and fringe area property bears closer examination. They may be individuals wishing to own their own house but, more importantly, they may frequently be small entrepreneurs living in the area who are seeking opportunities to invest in and improve rental property in their immediate neighborhood. It is this traditional American small entrepreneur who is discouraged from investment because he is denied a fair return by reason of excessive taxation. In effect, the government, through the Board of Assessors, interferes in the capitalist free-market operation by making investment in property in the core and fringe areas unprofitable.⁶

Partial solution lies in ensuring that assessed valuations be equitable and that the method for correcting inequities be timely, efficient and effectively impartial. Such timeliness, efficiency and impartiality are possible through use of modern computer technology. The computer can be programmed to provide an up-to-the-minute analysis of market conditions thereby making possible immediate detection of significant changes. Similarly, adjustments can be made more frequently and with greater ease.

The necessary technology is similar to that employed by banks. For example, many banks no longer allow large amounts of mortgage escrow to accrue but annually readjust mortgage payments to match changes. As in banking operations too, increased computerization may make possible savings in personnel formerly employed in tedious, time-consuming clerical operations.

In summary, then, it has been shown that there exist severe inequities in assessment of residential property in the core and fringe areas in Buffalo and that the machinery for remedying these inequities is not functioning satisfactorily. Further, it is argued that the effect of these inequities is to aggravate blight conditions in these areas.

5. "Existing owners are unwilling to absorb the great capital loss that sale at this price (1-1.5 times annual gross rents) implies. We found that a much higher proportion of investors in these areas reported they wanted to get out of the real estate market immediately, but could find no buyers for their property." *Id.* at 6.

6. "In many cities, the high level of property taxes, resulting from inequitable assessment practices, lessens the opportunity for transfer to more activist owner/managers who would improve properties in blighted areas." *Id.* at 7. "To considerable extent these owners are non-white." *Id.* at 6.

Finally, it is recommended that a program directed toward increased computerization of the assessment process be implemented.

Urban blight is a problem confronting most city governments. Modernization of the assessment operation through increased computerization acts to remove impediments to naturally-occurring corrective factors. It is hoped then that not only Buffalo but all cities interested in formulating solutions to the problem will give serious consideration to the proposal made herein.